Dominic Lau Hoe Chai v Maszlee bin Malik & Ors

HIGH COURT (PENANG) — JUDICIAL REVIEW APPLICATION NO PA-25–53–09 OF 2019
AMARJEET SINGH JC
28 NOVEMBER 2019

Administrative Law — Judicial review — Application for leave — Applicant applied leave of court for judicial review application — Whether applicant had locus standi to apply for judicial review — Whether application for judicial review was frivolous — Whether decision made by respondents contradicted art 12(3) of the Federal Constitution — Whether policy by respondent to implement Jawi writing in schools amenable to judicial review — Federal Constitution art 12(3)

The applicant sought leave of court under O 53 of the Rules of Court 2012 to commence an application for judicial review against the Minister and Deputy Minister of Education, the Ministry of Education and the Government of Malaysia. The reliefs that the applicant was seeking were: (a) an order of certiorari to quash the decision to implement Jawi writing in the Malay Language or Bahasa Melayu subject for standard four students beginning with the year 2020 followed with standard five students in the year 2021 and standard six students in the year 2022 at the National Type Schools on the condition that such implementation must be agreed to by the Parent Teacher Association ('PTA'), parents and students of the school; (b) an order of certiorari to quash the decision to implement Jawi writing in the Malay Language subject for standard four students beginning with the year 2020 followed with standard five students in the year 2021 and standard six students in the year 2022 at the National Schools; and (c) a prohibition order to prohibit the respondents from implementing Jawi writing in the said schools. The decision to implement Jawi writing in the Malay Language subject taught at the National Type and National Schools beginning with the year 2020 was made by the Cabinet on 14 August 2019 ('the said decision'). The said decision was circulated to the public via a media statement on the same date. Apart from the date of implementation and the targeted group of students the Cabinet also decided that the basic text book of the Malay Language subject contains three pages on introduction to Jawi writing. In his O 53 statement in support of the application, the applicant contended that the said decision which was an education policy was unconstitutional and/or a policy that was made without taking into account relevant considerations including the views of the members of Parliament, Chinese and Tamil associations and non-governmental organisations such as the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism. The applicant has advanced two grounds in support of the reliefs he is seeking: (i) that the policy

A contravenes art 12(3) of the Federal Constitution; and (ii) that the policy was confusing, burdensome, and unreasonable and what ought to be the appropriate policy the respondents should implement or consider implementing. The respondent raised the issues of whether the applicant had passed the test of threshold locus standi to apply for the present application.
B The respondent also contended that the leave for judicial review application by the applicant was frivolous.

Held, dismissing application for leave:

C (1) In applying the principle in case of *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145, the court was satisfied that the applicant had passed the test of threshold locus standi. The applicant had framed and brought these proceedings in the nature of public interest litigation as a citizen, parent and leader of a
D political party whose members are also parents. The decision to implement Jawi writing at the said schools has generated considerable public discourse and debate. The applicant saw the implementation of Jawi writing as a means of imposing the religion of Islam to students whose religion is other than Islam (see para 9).

E (2) Having read art 12(3) and (4) with care, it was very clear to the court that a student in any school was protected from receiving any instruction in a religion other than his own except if allowed by his parents. There was nothing in art 12(3) that prohibited the learning of a particular language
F the script of which also incidentally forms the script of a holy text of a religion. The learning of a language was not an issue under art 12(3). It will become an issue only if in teaching the language a student is caused to receive instruction in a religion other than his own (see para 16).

G (3) There was not an iota of evidence apart from the applicant's supposition and opinion that the teaching of Jawi writing would amount to a student receiving instruction in a religion other than his own. There was therefore no arguable case shown for further investigation at the substantive hearing of a perceived breach of art 12(3) (see para 16).

H (4) The Federal Government's explanation of the policy of Jawi writing in Parliament were clearly considerations of non-legal factors. The court was of the opinion that any evaluation of these factors would have been an act of entering into the domain which belonged solely to the executive. Any inquiry weighing the pros and cons of the policy and to test the
I degree of its beneficial disposition based on however sound and good reasoning advanced by the applicant should be avoided. The wisdom and reasons taken into account by the Cabinet in deciding to implement Jawi writing at the said schools was not amenable to judicial review (see paras 18 & 20–21).

[Bahasa Malaysia summary

Perayu telah memohon kebenaran mahkamah di bawah A 53 Kaedah-Kaedah Mahkamah 2012 untuk memulakan permohonan semakan kehakiman terhadap Menteri dan Timbalan Menteri Pendidikan, Kementerian Pendidikan dan Kerajaan Malaysia. Relief yang dituntut: (a) satu arahan certiorari untuk membatalkan keputusan untuk melaksanakan tulisan Jawi di dalam subjek Bahasa Melayu untuk murid darjah empat bermula tahun 2020 seterusnya tahun 2021 untuk murid darjah lima dan tahun 2022 untuk murid darjah enam di semua sekolah jenis kebangsaan dengan syarat perlaksanaan tersebut haruslah dipersetujui oleh Persatuan Ibubapa dan Guru ('PIBG'), ibubapa dan murid-murid di sekolah tersebut; (b) satu arahan certiorari untuk membatalkan keputusan untuk melaksanakan tulisan Jawi di dalam subjek Bahasa Melayu untuk murid darjah empat bermula tahun 2020 seterusnya tahun 2021 untuk murid darjah lima dan tahun 2022 untuk murid darjah enam di semua sekolah kebangsaan; dan (c) arahan larangan untuk menghalang responden-reponden untuk melaksanakan tulisan Jawi di sekolah-sekolah tersebut. Keputusan untuk melaksanakan tulisan Jawi dalam subjek Bahasa Melayu yang diajar di Sekolah Jenis Kebangsaan dan Sekolah Kebangsaan bermula tahun 2020 telah dibuat oleh Kabinet pada 14 Ogos 2019 ('keputusan tersebut'). Keputusan tersebut telah disebarkan kepada umum melalui penyataan media pada tarikh yang sama. Selain daripada tarikh perlaksanaan dan golongan murid yang disasarkan, Kabinet juga memutuskan bahawa buku teks asas untuk subjek Bahasa Melayu akan mengandungi tiga muka surat berkaitan pengenalan kepada tulisan Jawi. Di dalam penyataan sokongan untuk permohonan di bawah A 53, perayu telah berhujah bahawa keputusan tersebut yang merupakan polisi pendidikan adalah bercanggah dengan perlembagaan dan/atau polisi yang telah dibuat tanpa mengambil kira perkara yang berkaitan termasuklah pandangan ahli parlimen, kesatuan Cina dan Tamil dan pertubuhan bukan kerajaan seperti Majlis Perundingan Buddhisme, Kristian, Hindu, Sikh dan Taoisme Malaysia. Perayu telah memberikan dua alasan sokongan untuk tuntutan yang dipohon: (i) polisi tersebut adalah bertentangan dengan art 12(3) Perlembagaan Persekutuan; dan (ii) polisi tersebut adalah mengelirukan, membebankan dan tidak munasabah dan bukanlah polisi yang sesuai untuk dilaksanakan responden-responden atau cadangan pelaksanaan. Responden-responden telah mengutarakan isu sama ada pemohon telah memenuhi syarat-syarat untuk mempunyai locus standi untuk permohonan yang dipohon. Responden-responden juga telah berhujah bahawa kebenaran untuk permohonan untuk semakan kehakiman adalah sia-sia.

Diputuskan, menolak permohonan untuk kebenaran tersebut:

(1) Dalam mengguna pakai prinsip di dalam kes *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145, mahkamah telah berpuas hati bahawa pemohon telah

memenuhi syarat-syarat untuk memenuhi locus standi. Pemohon telah merangka dan memulakan prosiding ini di bawah litigasi berkenaan sifat kepentingan awam sebagai seorang warganegara, ibubapa dan ketua parti politik yang mana ahli-ahlinya adalah merupakan ibubapa. Keputusan untuk melaksanakan tulisan Jawi untuk sekolah-sekolah tersebut telah membuatkan wacana dan pendebatan awam yang hangat. Pemohon menyedari bahawa perlaksanaan tulisan Jawi tersebut sebagai satu langkah untuk menyebarkan agama Islam kepada murid-murid yang bukan beragama Islam (lihat perenggan 9).

(2) Setelah meneliti art 12(3) dan (4) dengan mendalam, adalah amat jelas kepada mahkamah bahawa murid di dalam mana-mana sekolah adalah dilindungi daripada menerima apa-apa arahan berbentuk keagamaan selain daripada agamanya sendiri melainkan dibenarkan ibubapa. Tiada apa-apa di dalam art 12(3) yang menghalang daripada mempelajari sesuatu bahasa yang mana tulisannya secara tidak langsung merupakan tulisan kitab suci sesuatu agama. Pembelajaran sesuatu bahasa bukanlah antara isu di bawah art 12(3). Ia hanyalah boleh dijadikan isu sekiranya di dalam pembelajaran bahasa tersebut, menyebabkan murid menerima arahan berbentuk keagaaman selain daripada agamanya sendiri (lihat perenggan 16).

(3) Tiada bukti langsung selain daripada anggapan dan tanggapan pemohon bahawa pengajaran tulisan Jawi menyebabkan murid menerima arahan berbentuk keagamaan selain daripada agamanya sendiri. Oleh itu, tiada kes yang boleh menunjukkan perlunya pernilaian selanjutnya untuk pendengaran substantif berkenaan pelanggaran art 12(3) (lihat perenggan 16).

(4) Penjelasan Kerajaan Persekutuan mengenai polisi tulisan Jawi di Parlimen adalah jelas bahawa ianya tidak termasuk di bawah faktor perundangan. Mahkamah berpendapat bahawa sebarang penilaian terhadap faktor-faktor tersebut adalah perbuatan yang akan memasuki bidang kuasa eksekutif. Sebarang persoalan untuk pertimbangan baik dan buruk polisi tersebut dan untuk menilai tahap benefisial berdasarkan alasan oleh pemohon, walaupun merupakan alasan yang sah, perlulah dielakkan. Sebab dan alasan yang telah diambil kira oleh Kabinet dalam menentukan perlaksanaan tulisan Jawi untuk sekolah-sekolah tersebut adalah tidak tertakluk kepada semakan kehakiman (lihat perenggan 18 & 20–21).]

Cases referred to

Ahli-Ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul

Halim & Other Appeals [2011] MLJU 698; [2012] 1 CLJ 805, FC (refd)
Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia [2013] 2 MLJ 321; [2013] 2 CLJ 1009, FC (refd)
Government of Malaysia v Robert Linggi [2015] MLJU 2156; [2015] 1 LNS 1515, CA (refd)
Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187, FC (refd)
Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145; [2014] 2 CLJ 525, FC (refd)
Malik Brothers v Narendra Dadhich AIR [1999] SC 3211, SC (refd)
Manoharan a/l Malayalam & Anor v Dato' Seri Mohd Najib bin Tun Hj Abdul Razak & Ors [2013] 5 MLJ 186, CA (refd)
Marcel Jude Joseph & Anor v The Minister of Education & Ors [2012] MLJU 665; [2013] 1 CLJ 1106, HC (refd)
QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 3 MLJ 164; [2006] 2 CLJ 532, CA (refd)
Rev Christopher Mtikila v the Attorney-General (Civil Case No 5 of 1993) (unreported) (refd)
Robert Linggi v The Government of Malaysia [2011] 2 MLJ 741, HC (refd)
WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd [2012] 4 MLJ 296; [2012] 4 CLJ 478, FC (refd)

Legislation referred to

Federal Constitution arts 12(3), 12(4), 152(1)
National Language Acts 1963/67 s 9
Rules of Court 2012 O 53, O 53 r 2(4)
Tanzanian Constitution [TAN] art 26(2)

Tan Lee Kiat (Mak Kah Keong with him) (KK Mak & Co) for the applicant.
Ahmad Hanir Hambaly (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Amarjeet Singh JC:

INTRODUCTION

[1] The applicant is seeking leave of court under O 53 of the Rules of Court 2012 to commence an application for judicial review against the Minister and Deputy Minister of Education, the Ministry of Education and the Government of Malaysia. The reliefs that the applicant is seeking are as follows:

(a) an order of certiorari to quash the decision to implement Jawi writing in the Malay Language or *Bahasa Melayu* subject for standard four students beginning with the year 2020 followed with standard five students in the year 2021 and standard six students in the year 2022 at the National Type Schools on the condition that such implementation must be

agreed to by the Parent Teacher Association ('PTA'), parents and students of the school;

(b) an order of certiorari to quash the decision to implement Jawi writing in the Malay Language subject for standard four students beginning with the year 2020 followed with standard five students in the year 2021 and standard six students in the year 2022 at the National Schools; and

(c) a prohibition order to prohibit the respondents from implementing Jawi writing in the said schools.

BACKGROUND

[2] The decision to implement Jawi writing in the Malay Language subject taught at the National Type and National Schools beginning with the year 2020 was made by the cabinet on 14 August 2019 ('the said decision'). The said decision was circulated to the public via a media statement on the same date. Apart from the date of implementation and the targeted group of students the cabinet also decided that the basic text book of the Malay Language subject contains three pages on introduction to Jawi writing.

[3] The applicant brings this proceeding as the President of Parti Gerakan Rakyat Malaysia, a political party. In his O 53 statement in support of the application the applicant contends that the said decision which is an education policy is unconstitutional and/or a policy that was made without taking into account relevant considerations including the views of the members of Parliament, chinese and tamil associations and non-governmental organisations such as the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism. The applicant has advanced two grounds in support of the reliefs he is seeking:

(a) that the policy contravenes art 12(3) of the Federal Constitution ('art 12(3)'); and

(b) that the policy is confusing, burdensome, and unreasonable and what ought to be the appropriate policy the respondents should implement or consider implementing.

THE SUBMISSIONS

[4] The senior federal counsel who appeared for the Attorney General apprised me of three features in the present case as to why leave should not be granted. The features are that:

(a) the applicant has no threshold locus standi;

(b) the decision sought to be quashed is a policy decision that is not amenable to judicial review; and

(c) no arguable case is shown for leave to be granted. A

[5] The applicant in response submitted that leave should be granted:

(a) as the applicant as a concerned citizen and parent has locus standi to challenge acts of the executive including policy decisions which are perceived as violating the Federal Constitution and cites the High Court case of *Robert Linggi v The Government of Malaysia* [2011] 2 MLJ 741 which was followed by the Court of Appeal in *Manoharan a/l Malayalam & Anor v Dato' Seri Mohd Najib bin Tun Hj Abdul Razak & Ors* [2013] 5 MLJ 186 in support of his standing; B C

(b) the question whether the impugned policy violates art 12(3) is an arguable case that requires investigation at the substantive hearing; and

(c) that the impugned policy is irrational and failed to take into account relevant aspects and considerations including the views of the relevant stakeholders. D

THE DECISION OF THE COURT

Threshold locus standi E

[6] The first issue to be decided is whether the applicant has threshold locus standi to make this application. It is a requirement of O 53 r 2(4) of the Rules of Court 2012 that only persons who are 'adversely affected' by the decision of a public authority are entitled to make the application. F

[7] In this regard it was established in *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 CLJ 525 ('MTUC') that the 'adversely affected' test is the single test for all remedies sought by way of judicial review applications under O 53 of the Rules of Court 2012. To pass the test the applicant has to at least show he has a real and genuine interest in the subject matter. It is not necessary to establish an infringement of a private right or the suffering of special damage. The Federal Court agreed with the principle in *QSR Brands Bhd v Suruhanjaya Sekuriti & Anor* [2006] 3 MLJ 164; [2006] 2 CLJ 532 which established that to fall within the factual spectrum of 'adversely affected' the applicant must show either an obviously sufficient personal interest in the legality of the action impugned which includes cases where the complaint is that his fundamental right has been or is being or is about to be infringed, or to show that the case is being brought in the nature of a public interest litigation for the purpose of redressing public injury, enforcing public duty, protecting social rights or vindicating public interest (*Malik Brothers v Narendra Dadhich* AIR [1999] SC 3211). G H I

[8] Thus, only the threshold test of locus standi stated in *MTUC* applies to all judicial review applications. The test relied by the applicant as stated in *Robert Linggi* and *Manoharan* does not apply as those cases were not judicial review applications made pursuant to O 53 of the Rules of Court 2012. In any event the Court of Appeal in *Government of Malaysia v Robert Linggi* [2015] 1 LNS 1515 pointed out that the principle in the Tanzanian High Court case of *Rev Christopher Mtikila v the Attorney-General* which was the basis of the decision of the High Court in *Robert Linggi* is inapplicable in Malaysia as that case was decided premised on art 26(2) of the Tanzanian Constitution which states that, 'Every person is entitled, subject to the procedure provided for by law, to institute proceedings for the protection of the Constitution and legality'. Thus, the Court of Appeal held that the Constitution of Tanzania had vested its citizens with double capacity: the capacity to seek redress as an individual and the capacity to seek redress as a member of the community. The Federal Constitution does not have a similar provision. It is trite that principles in cases based on specific provisions of a foreign constitution do not apply in Malaysia (*Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187).

[9] In applying the principle in *MTUC* to the facts of the present case, I am satisfied that the applicant has passed the test of threshold locus standi. The applicant has framed and brings these proceedings in the nature of public interest litigation as a citizen, parent and leader of a political party whose members are also parents. The decision to implement Jawi writing at the said schools has generated considerable public discourse and debate. The applicant sees the implementation of Jawi writing as a means of imposing the religion of Islam to students whose religion is other than Islam. The applicant's opinion is premised on the fact that Jawi writing is closely connected to the teachings of Islam and the script for the holy text of the religion, the Al-Quran is written in Jawi. The applicant therefore relies on art 12(3) to strike down the policy to implement Jawi writing at the said schools so that students would not be receiving instruction of a religion other than their own.

TEST TO BE SATISFIED AT LEAVE STAGE

[10] The next step of the inquiry is to determine whether the applicant has satisfied the test for granting leave. It is settled law that an applicant must demonstrate that his application is not frivolous and that an arguable case in favour of granting the reliefs sought at the substantive hearing may be the resultant outcome. In determining whether such an arguable case is demonstrated or not, I am not entitled to embark on examining the substantive merits of the application and must keep in mind that the threshold for granting leave is very low. This step however will not arise if the subject matter for review is either non-justiciable or not amenable to judicial review (see Federal Court decisions in *WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd* [2012] 4 MLJ 296; [2012] 4 CLJ 478; and *Ahli-Ahli Suruhanjaya Yang Membentuk*

Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals [2011] MLJU 698; [2012] 1 CLJ 805).

Arguable case and the amenability to review

[11] It is not in dispute that the decision sought to be reviewed is an education policy sought to be implemented by the Federal Government. The Federal Court in *Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia* [2013] 2 MLJ 321; [2013] 2 CLJ 1009 had laid down the following principles where a policy decision is sought to be reviewed:

(a) the question whether a decision based on policy considerations is amenable to judicial review may be determined at the leave stage if the evidence of the impugned policy is before the court as evidenced in the affidavits and that it is not a requirement that the issue must be decided after hearing all the evidence at the substantive hearing;

(b) there is no purpose of granting leave when the facts do not make out an arguable case for investigation at the substantive hearing;

(c) a policy decision is not amenable to judicial review if the policy emanates after consideration of non-legal or technical factors as the court does not possess the necessary information and expertise to evaluate such factors and to pass judgment on the appropriateness or adequacy of a particular policy; and

(d) it is not within the domain of the court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying or annulling it, based on howsoever sound and good reasoning, unless the policy violates the Federal Constitution or any written law, or is arbitrary, or there exist elements of mala fides or abuse of power (following MP Jain and SP Jain in their book *Principles of Administrative Law* (6th Ed) at 1069).

[12] I will first consider the issue whether an arguable case is demonstrated by the perceived contravention of art 12(3) of the Federal Constitution through the implementation of Jawi writing in the Malay Language subject at the said schools. The connection between Jawi writing and the Malay Language is provided by art 152(1) of the Federal Constitution which reads as follows:

> The national language shall be the Malay language and shall be in such script as Parliament may by law provide: ...

and Parliament specifically enacted s 9 of the National Language Acts 1963/67 providing for the script of the Malay Language in the following words:

> The script of the national language shall be in the Rumi script: provided that this shall not prohibit the use of the Malay script, more commonly known as the Jawi script, of the national language.

[13] Thus, the Jawi script is also the script of the national language or *bahasa kebangsaan* (as stated in the Malay text of the Federal Constitution) which is the Malay Language. The Federal Government has decided to implement the learning of the Jawi script of the national language by teaching Jawi writing as part of the Malay Language subject at the said schools.

[14] The applicant's complaint is that the policy to implement Jawi writing in the Malay Language subject at the said schools would violate art 12(3) which reads as follows:

> No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.

[15] The applicant, as shown above, pegs his case on the fact that Jawi writing uses verses from the religion of Islam and that the holy text of the religion, the Al-Quran is in the Jawi script and therefore the teaching of Jawi writing at the said schools would cause or result in non-Muslim students to receive instructions in a religion other than their own.

[16] Having read art 12(3) and (4) with care, it is very clear to me that a student in any school is protected from receiving any instruction in a religion other than his own except if allowed by his parents. However, there is nothing in art 12(3) that prohibits the learning of a particular language the script of which also incidentally forms the script of a holy text of a religion. The learning of a language is not an issue under art 12(3). It will become an issue only if in teaching the language a student is caused to receive instruction in a religion other than his own. There is not an iota of evidence apart from the applicant's supposition and opinion that the teaching of Jawi writing would amount to a student receiving instruction in a religion other than his own. The syllabus or what Jawi writing entails is yet to be announced. The teaching of Jawi writing like the teaching of the Rumi writing is the method to learn the script of the Malay Language which is the national language. There is therefore no arguable case shown for further investigation at the substantive hearing of a perceived breach of art 12(3).

[17] I now turn to the second issue: whether the policy to implement Jawi writing at the said schools is amenable to judicial review. I have considered the material produced by the applicant and am satisfied that the policy decision to

implement Jawi writing is not amenable to judicial review. It follows that no arguable case can therefore arise for further investigation at the substantive hearing. My reasons are as follows.

[18] The policy to implement teaching of Jawi writing in the Malay Language subject at the said schools is the exclusive right of the Federal Government which decides what kind of education policy should be implemented in the whole of Malaysia. The Minister of Education explained in Parliament, as reported in the Hansard dated 21 October 2019, on the policy to implement Jawi writing as follows:

> ... ingin dijelaskan di sini bahawa tulisan jawi bukanlah merupakan satu mata pelajaran atau subjek, tetapi diperkenalkan sebagai aspek seni Bahasa yang merupakan strategi dan aktiviti bagi menyokong pelaksanaan kemahiran Bahasa, selain memperkayakan murid dengan pengetahuan mengenai seni, warisan dan Bahasa Melayu itu sendiri. ... Selain daripada itu, tulisan jawi juga akan diperkenalkan sebagai *national heritage* atau pun sebagai warisan kebangsaan dan *national identity* atau identiti kebangsaan. Ini selaras dengan tulisan jawi yang tercatat dan termaktub dalam jata negara dan jata negeri.

[19] The applicant contends that the implementation of Jawi writing will confuse the students as to the learning of the Malay Language and will increase the burden on the students and teachers. It is also argued that the policy is unreasonable on the ground that it does not have any practical and important value to help the students to improve the learning of the Malay Language as the official writing of the Malay Language is Rumi. The applicant instead suggested that the appropriate policy is for Jawi writing to be introduced at university level or in art classes instead of the Malay Language subject. It was also suggested that excursions to museums could be made to introduce students to Jawi writing.

[20] The Federal Government through the Education Minister has explained the policy of Jawi writing in Parliament. The policy clearly concerns matters of the Malay Language, national heritage and national identity which were amongst the factors taken into account by the Cabinet. These are clearly considerations of non-legal factors. In my judgment any evaluation of these factors would be an act of entering into the domain which belongs solely to the executive. Therefore any inquiry weighing the pros and cons of the policy and to test the degree of its beneficial disposition based on however sound and good reasoning advanced by the applicant should be avoided. In this regard I can do no better than quote the learned judge in *Marcel Jude Joseph & Anor v The Minister of Education & Ors* [2012] MLJU 665; [2013] 1 CLJ 1106 when faced with a similar challenge to an education policy:

> The simple implication is that unless it is specifically provided for in the Federal Constitution or any other legislation, no such restriction is placed on the

government in formulating policy for the education system in the country. Hence the introduction or reversal of PPSMI (or the teaching and learning of science and mathematics in the English language) is a matter of government policy, nothing more, nothing less. Policies of the government of course cannot be questioned by the Court of Law which concerns only with interpretation of law enacted by Parliament. The executive arm of the government decides what policy should be implemented and if the people are not happy, their remedy lies with the court of public opinion.

[21] I therefore hold that the wisdom and reasons taken into account by the Cabinet in deciding to implement Jawi writing at the said schools is not amenable to judicial review.

CONCLUSION

[22] For the reasons given above the application for leave is dismissed.

Application for leave dismissed.

Reported by Mohd Kamarul Anwar